

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

&

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

THURSDAY, THE 28TH JUNE 2007 / 7TH ASHADHA 1929

MFA.No. 1043 of 2000()

**OP(MV.)125/1996 of MOTOR ACCIDENT CLAIMS TRIBUNAL,
OTTAPALAM dt. 8.10.99**

APPELLANT: PETITIONER

**C.MOHANDAS, S/O. DAMODARAN,
CHARAKKUMALIL HOUSE, P.O. KULUKKALLUR,
PALAKKAD DISTRICT, PIN 679 337.**

BY ADV. SRI.P.K.RAVISANKAR

RESPONDENTS: RESPONDENTS

- *1. P.K.MOHAMMEDKUTTY,
S/O.KUNHIPOCKERKUTTY, AKKARA HOUSE,
PERUMANNANKALARI, P.O.KUTTIPALA
TIRUR, MALAPPURAM DISTRICT (DIED)**
- 2. K.BEERAN, S/O.MOIDU, KUNDULLIYIL HOUSE,
P.O. KULUKKALLUR PALAKKAD DISTRICT,
(D.L. NO.542/91/PO. VALID UPTO 18.3.1997)**
- 3. UNITED INDIA INSURANCE CO.LTD.,
REP.BY ITS DIVISIONAL MANAGER,
DIVISIONAL OFFICE, PALAKKAD,.
(POLICY NO.101205/31/01/00554/91.
CERTIFICATE NO.111952, VALID UPTO 23.7.92
ISSUED FROM MANNARKKAD BRANCH.)**

*** IT IS RECORDED THAT 1ST RESPONDENT DIED AND HE HAS NOT
LEFT BEHIND ANY LEGAL REPRESENTATIVES (VIDE MEMO
C.F. NO.6899/05, ORDER DT. 31.8.05.**

**BY ADV. SRI.P.CHANDRASEKHARAN - R2
SRI.SANTHEEP ANKARATH**

**THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD
ON 28 / 06 /2007 , ALONG WITH MFA NO. 1047 OF 2000
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

J.B. KOSHY and K.P.BALACHANDRAN, JJ.

M.F.A. Nos. 1043 & 1047 of 2000

Dated this the 28th day of June, 2007

Judgment

Koshy, J.

These two appeals are filed by a driver and pillion rider of a motor cycle who got injured while they were riding the motor cycle. They were proceeding from Machattukara to Nellaya. Motor cyclist and pillion rider sustained fracture of bones of right leg below knee. Minor injuries were sustained by the driver. Here, according to the claimants, the jeep driver was fostering enmity against the motor cyclist and, with murderous intention to do away with their lives, the jeep hit them. According to the allegation raised by the claimants themselves, second respondent with the intention to kill the claimants, came driving on his jeep and knocked down the motor cycle in which petitioners were riding, that when they fell down on ground sustaining injuries, second respondent bet them with an iron rod. The allegations would show that it is not an accident, but, a murderous attempt. Injuries were caused

to them in a murderous attempt by the second respondent. In the above circumstances, both claims were dismissed by the tribunal.

2. The learned counsel, relying on the decision of the Supreme Court in Smt.Rita Devi and others v. New India Assurance Co. Ltd. (JT 2000 (5) SC 355), argued that the victim of a motor accident is entitled to claim compensation from the insured if disablement suffered due to an accident arising out of the use of a motor vehicle. In that particular case, an autorickshaw driver was murdered by a customer who had an intention to steal the autorickshaw. In that circumstances, it was held that death of the driver was caused by an accident arising out of the use of a motor vehicle. As far as the driver is concerned, it is an untoward incident. In that case, the Supreme Court held as follows:

"10. The question, therefore, is can a murder be an accident in any given case? There is no doubt that 'murder', as it is understood, in the common parlance is a felonious act where death is caused with intent and the perpetrators of that act normally have a motive against the victim for such killing. But there are also

instances where murder can be by accident on a given set of facts. The difference between a 'murder' which is not an accident and a 'murder' which is an accident, depends on the proximity of the cause of such murder. In our opinion, if the dominant intention of the Act of felony is to kill any particular person then such killing is not an accidental murder but is a murder simplicitor, while if the cause of murder or act of murder was originally not intended and the same was caused in furtherance of any other felonious act then such murder is an accidental murder."

The above observations are against the appellants. In this case, the claimants sustained injuries only due to the felonious act of the second respondent with the intention to cause injuries to them. In fact, the Sessions Court convicted the second respondent. It is not accidental injuries caused to the persons. Vehicle was used as a weapon and, therefore, claimants are not entitled to compensation as it cannot be stated that they sustained injuries due to an accident arising out of the use of a motor vehicle. Hence, the tribunal correctly dismissed the claims and, therefore, we see no reason to

interfere in the award of the tribunal. Both the appeals are dismissed.

J . B . K O S H Y
J U D G E

K . P . B A L A C H A N D R A N
J U D G E

vaa

**J.B. KOSHY AND
K.P.BALACHANDRAN, JJ.**

M.F.A.Nos.1043 & 1047/2000

JUDGMENT

Dated:28th June, 2007